

# Oil and Gas Development Regulatory Overview

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## U.S. Forest Service Lands

Although the Bureau of Land Management (BLM) has the major role in issuing oil and gas leases and permits on National Forest System lands (NFS), the U.S. Forest Service (FS) is responsible for determining what NFS lands are available for leasing and under what stipulations. Once leases are issued, the FS regulates all surface-disturbing activities conducted pursuant to a lease. This results in a staged decision and environmental analysis process through which the FS cooperates and coordinates with Interior agencies to ensure that management goals are met, potential impacts

to surface resources are mitigated, and that the land affected is rehabilitated.

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## Statutes

**Organic Administration Act of 1897, 16 U.S.C. § 551:** Authorizes the Secretary of Agriculture to promulgate rules and regulations for the use and occupancy of the National Forests.

**Mineral Leasing Act of 1920 (MLA), 30 U.S.C. §§ 181-287:** Authorizes the Secretary of the Interior to issue leases for leasable minerals on public domain lands. Amended by the Federal Onshore Oil and Gas Leasing Reform Act of 1987, PL 100-203, to, among other things, authorize the Secretaries of Interior and Agriculture to regulate all surface-disturbing activities associated with any lease, and to impose mitigation and reclamation measures in order to "conserve surface resources." Also requires Secretary approval for proposed surface-disturbing activities within the lease area prior to issuance of a permit to drill on an oil and gas lease issued under this Act. Also prohibits the Secretaries from issuing new leases or approving assignment of an existing lease to any persons who have previously failed to comply with reclamation and mitigation requirements (§ 226(g)).

**Mineral Leasing Act for Acquired Lands of 1947, 30 U.S.C. §§ 351-359:** Extends leasing authority to lands that have been acquired by the Federal government (as compared to lands that have always remained under Federal ownership) and requires that the BLM obtain the consent of the Executive Department (in this case, the Secretary of Agriculture) prior to lease issuance on acquired NFS lands.

**Mining and Minerals Policy Act of 1970, 30 U.S.C. § 21a:** Maintains that "it is the continuing policy of the Federal Government in the national interest to foster and encourage . . . the orderly and economic development of domestic mineral resources . . ."

**National Forest Management Act of 1976 (NFMA), 16 U.S.C. §§1600 et seq.:** Amended the Forest and Rangeland Renewable Resource Planning Act of 1974 to require the FS to prepare a forest plan for each national forest.

**National Environmental Policy Act of 1966, 42 U.S.C. §§ 4321 et seq.:** Mandates that federal agencies assess the environmental effects of a proposed action and engage the public in the analyses of environmental impacts before making decisions that affect the human environment.

**Energy Security Act of 1980, 42 U.S.C. § 8855:** Authorizes the Secretary of Agriculture to process applications for leases and permits for resource development on NFS lands, notwithstanding the current status of any Forest Plan.

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## Regulations

Proposed revisions to the Forest Service planning regulations are currently out for public comment so the future specific planning process is uncertain. Since a Forest Plan establishes the broad management framework for activities in a National Forest, this is a critical time for comments and input from other agencies and the general public.

The FS's decisions as to which lands are administratively available for leasing and with what constraints or stipulations, whether made through the forest planning process or as stand-alone decisions, require a NEPA analysis. Since implementation of the leasing decision may occur over an extended period, a NEPA adequacy review is conducted prior to forwarding lease parcels to the BLM. If new information or changed conditions are identified, further NEPA analysis may be needed.

If leases are issued and subsequent drilling activities proposed, further NEPA analysis, including public scoping and comment, is conducted to address resource issues and to identify conditions of approval for the Surface Use Plan of Operations.

### **(1) Planning (note that 36 C.F.R. § 219 is currently proposed for revision)**

**Overview, 36 C.F.R. § 219.3:** Discusses the levels at which planning may be undertaken depending upon the scope of the issues, including the national, regional, national forest or grassland, and/or ranger district administrative levels. Also lists the key elements in the planning cycle.

**Key Elements, 36 C.F.R. §§ 219.4-219.11:** Provides detailed steps of the planning process, including opportunities for public comment, amendments, and revisions.

**Collaboration, 36 C.F.R. §§ 219.12-219.18:** Explains how the FS is required to engage the public, federal, state, and local agencies and other groups in the planning process.

### **(2) Leasing**

**Leasing Analysis, 36 C.F.R. § 228.102(c):** Requires FS to conduct leasing analysis via the forest planning process and/or NEPA.

**Leasing Decisions, 36 C.F.R. § 228.102(d)-(e):** The FS notifies BLM as to which FS lands have been found to be available for leasing. The FS then authorizes the BLM to offer specific lands for lease subject to an adequate NEPA document, Land and Resource Management Plan, and surface occupancy stipulations.

**Lease Sales, 43 C.F.R. Parts 3110, 3120:** Govern the competitive and non-competitive lease sales held by the BLM.

### **(3) Exploration and Development**

**Onshore oil and gas operations; Drilling applications and plans, 43 C.F.R. § 3162.3-1:** Governs the procedures for site-specific oil and gas permitting. An operator is required to apply to the BLM for an Application for a Permit to Drill (APD).

**Onshore Oil and Gas Orders, 36 C.F.R. § 228.105:** Outlines the requirements for operators in the preparation of an Application for Permit to Drill (APD) and Surface Use Plan of Operation (SUPO).

**Surface use plan of operations, 36 C.F.R. § 228.106:** Requires FS analysis and approval of a surface use plan of operations prior to issuance of a permit to drill. The operator submits the proposed plan of operations to BLM as part of the APD.

**Decision and Notice, 36 C.F.R. § 228.107(b)-(c):** Explains FS review, public notice, and decision-making processes for the proposed surface use plan of operations.

**Surface Use Requirements, 36 C.F.R. § 228.108:** Identifies requirements to be met by an operator in the conducting of operations on NFS lands.

**Environmental Obligations, 43 C.F.R. § 3162.5-1:** Requires EA or EIS before approval of the APD, and protection of environmental quality during operations.

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## Relevant Case Law

The key issues or decisions of the following case law have been incorporated into the FS regulations for oil and gas but are still of interest for the concepts that they present relative to NEPA analysis and oil and gas decisions.

Conner v. Burford, 848 F.2d 1441 (9th Cir. 1988): Prior to this case the Forest Service viewed the issuance of a lease as a paper transaction which had little or no environmental impact. Any detailed environmental analysis was deferred to the APD stage. The court held that an EIS is required prior to the issuance of a lease and "The EIS should serve to assist agencies in making decisions before any significant steps are taken which may damage the environment." The Court cited Thomas v. Peterson, 753 F.2d 754 (9th Cir. 1985): "A central purpose of an EIS is to force the consideration of environmental impacts in the decision-making process. That purpose requires that the NEPA process be integrated with agency planning at the earliest possible time (40 C.F.R. § 1501.2), and the purpose cannot be fully served if consideration of cumulative effects of successive, interdependent steps is delayed until the first step has already been taken."

This case led to the FS conducting a detailed analysis at the leasing stage, based on a "reasonably foreseeable scenario," to identify what lease stipulations were needed so that the agency would retain sufficient authority to apply mitigation at the subsequent stages. As such, the FS has developed a staged analysis and decision-making process, which may include:

1. Leasing
  2. Exploration
  3. Development
  4. Secondary Recovery
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# Oil and Gas Regulatory Process Flowchart (U.S. Forest Service Lands)

## Planning (LRMP)

- Identification and consideration of issues
- Information development and interpretation
- Proposed actions
  - NEPA triggered
- Plan decisions
- Amendment
  - Collaboration with public and other groups
  - NEPA triggered

90 day comment period if EIS necessary
- Revision
  - Collaboration with public and other groups

45 day comment period on plan

  - Notice of Intent to prepare EIS

90 day comment period on draft EIS
- Site-specific decisions
  - Collaboration with public and other groups
- Monitoring and evaluation for adaptive management
  - Public involvement

### Key Regulations:

36 C.F.R. §§ 219.4-219.11  
 36 C.F.R. § 219.4(b)(1)(vi)  
 36 C.F.R. § 219.8  
 36 C.F.R. § 219.9  
 36 C.F.R. §§ 219.12-219.18

### Opportunity for Comment:

The USFS must collaborate with the public in several steps of the planning process. It must comply with NEPA in choosing a proposed action and making Amendments. In the Revision process an EIS on which the public may comment is required.

## Leasing

### Lease Analysis

- As part of the NEPA analysis, FS maps lands that are: open, open with stipulations or closed to leasing.
- FS identifies for the BLM lands available for leasing.
- FS authorizes BLM to lease specific lands.
- If conflict with forest plan, amendment or revision required.
- The above steps require public comment & decisions subject to appeal.
- BLM adopts FS leasing analysis and makes leasing decision.

### Implementation of Lease Issuance

- Industry nominates or expresses interest in lands to be leased.
- FS prepares lease parcels and verifies adequate NEPA analysis.
- FS gives complete lease packages to BLM to list on sale notice.
- BLM offers leases in a competitive bid sale.
- Noncompetitive leases may be offered after competitive bid sale if tracts did not receive a bid.

36 C.F.R. § 228.102(c)  
 36 C.F.R. § 228.102(d)  
 36 C.F.R. § 228.102(e)  
 43 C.F.R. § 3120.5-1  
 43 C.F.R. § 3120.6

Before notifying the BLM of specific sites for leasing, the USFS must verify that an adequate NEPA document exists. If one does not, further environmental analysis must be done. If the lease conflicts with the forest management plan, the plan will be amended or revised—both may invite public comment.

## Development (APD)

Operator submits to BLM for approval of an Application for Permit to Drill (APD).

BLM gives the FS the APD information to post for public inspection. This 30 day posting is informational only and is not appealable.

- With the application, the operator submits a surface use plan of operations (SUPO) to be approved by the FS.
- NEPA triggered

- FS on-site visit
- CE/EA/EIS
- Public comment

- FS decides on SUPO and notifies BLM.
- Public given notice of decision and opportunity to appeal.

Upon consulting with FS, the BLM must:

1. Approve the application;
2. Disapprove the application; or
3. Advise the applicant why the decision has been delayed.

43 C.F.R. § 3162.3-1  
 36 C.F.R. § 228.106  
 36 C.F.R. § 228.107(b)-(c)  
 36 C.F.R. § 228.108  
 36 C.F.R. Subpart E, Appendix A  
 43 C.F.R. § 3162.5-1

The public has the opportunity to appeal the USFS decision regarding the SUPO pursuant to 36 C.F.R. Parts 217 and 251 (c). The public may have a chance to comment during the EA/EIS process that takes place before the USFS and BLM make their final decision on the application.

Normally about 120 days

45 day appeal period